IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9807 of 1999
With
SPECIAL CIVIL APPLICATION No. 9808 of 1999
With
SPECIAL CIVIL APPLICATION No. 9809 of 1999
With
SPECIAL CIVIL APPLICATION No. 9811 of 1999
With
SPECIAL CIVIL APPLICATION No. 9812 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SARVODAY ASHRAM - Petitioner(s)

Versus

NARANBHAI ISHWARBHAI & 4 - Respondent(s)

==========

Appearance :

MR KV GADHIA for Petitioner No(s).: 1.

MR J V JAPPE for Respondent No(s).: 1, 2, 3,4.

==========

CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 24/06/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the order dated 29.05.1999 passed by the learned Presiding Officer of the Labour Court, Kalol in References (LCK) No.15 of 1984, 63 of 1987, 32 of 1983, 41 of 1983 and 45 of 1984, whereby the said references was partly allowed.

2.0 The petitioner herein is a Ashram established under the Public Trusts Act and is engaged in the activities of manufacture and sale of khadi products. On 09.07.1983, the Executive Committee of the petitioner Ashram passed a Resolution, wherein it was resolved to hand over the activities of the Ashram to the employees as well as to the workers of the Ashram, in the capacity of Partners and the profit earned thereto, shall be distributed amongst them in the proportion of the work done by the employees / workers. It was also resolved to hand over the management / administration of the entire Ashram to the Managing Committee selected from amongst the employees / workers. The aforesaid Resolution came into force with effect from 01.04.1983.

2.1 The respondents herein who were employees / workers in the petitioner Ashram executed a Writing-cum-Undertaking on 10.07.1983 whereby they undertook to accept the responsibility and liability of the management and affairs of the petitioner Ashram.

2.3 It is the case of the petitioner Ashram that since the respondents themselves had stopped taking part in the administration of the Ashram, they were dismissed from the service.

2.4 Feeling aggrieved by the said action, the respondents raised industrial dispute before the Labour Court, Kalol, whereby the learned Presiding Officer, after hearing the parties, partly allowed the References and directed the petitioner Ashram to reinstate the respondents with 60 per cent back wages. Hence, this petition.

3.0 While admitting the matters, this Court had granted interim relief qua back wages alone, subject to the condition that the petitioner Ashram reinstates all the workmen within three weeks from the receipt of writ of the order. Mr.K V Gadhia learned advocate for the petitioner has stated that pursuant to the above order, the respondents have been reinstated in service. Hence, the impugned order of the Labour Court has been partly implemented.

4.0 Mr.K V Gadhia learned advocate for the petitioner has submitted that the petitioner Ashram is a Trust and is carrying out charitable activities. He has submitted that the respondents cannot be said to be “workmen” under the provisions of the I. D. Act, since they were Partners having a share in the profits of the Ashram. He has, therefore, submitted that there does not exist any employer – employee relationship between the petitioner Ashram and the respondents.

5.0 I have heard learned counsel for the parties and

perused the documents placed on record. The Labour Court has recorded a finding that since the petitioner Ashram was engaged in the activities of manufacture and sale of khadi products and thereby getting profits, the petitioner Ashram was an “industry” under the provisions of the said Act. In my opinion, the Labour Court has rightly arrived at the said finding since the petitioner Ashram was getting profits from the sale of its products.

6.0 However, the reasonings given by the Labour Court for awarding 60 per cent back wages to the respondents does not appear to be just and proper. The Labour Court has not given cogent reasons as to on what ground it has awarded 60 per cent back wages to the respondents. It appears that the Labour Court has awarded the back wages only on the ground that the respondents were not gainfully employed during the said period. Hence, the impugned order of the Labour Court, as regards directing the petitioner Ashram to award 60 per cent back wages to the respondents is erroneous and deserves to be quashed and set aside. Moreover, in view of the law laid down by the Apex Court that a workmen is entitled to wages only if he has worked, the Labour Court ought not to have granted the back wages.

7.0 For the foregoing reasons, these petitions are partly allowed. The impugned order of the Labour Court, Kalol, dated 29.05.1999 as regards directing the petitioner Ashram to reinstate the respondents with continuity of service is confirmed and the direction as regards awarding 60 per cent back wages to the respondents is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

```
pravin/*
```